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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

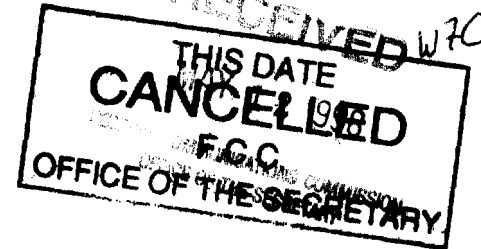
In the Matter of

Bell Operating Companies

Petitions for Forbearance from the
Application of Section 272 of the
Communications Act of 1934, as Amended,
to Certain Activities

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CC Docket No. 96-149



COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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SUMMARY

MCI opposes BellSouth's Petition for Reconsideration of the Forbearance Order. In that order, the Bureau granted BellSouth's and other BOCs' requests that the Commission forbear from the application of Section 272 to the BOCs' interLATA E911 services and BellSouth's interLATA reverse directory information services. The Bureau conditioned such relief on the requirement that BellSouth and the other BOCs make available to unaffiliated entities all subscriber listing information used in the provision of those services. BellSouth challenges those conditions.

BellSouth points out that the first forbearance criterion, in Section 10(a)(1), only requires that forbearance not result in "unjustly or unreasonably discriminatory" practices and argues that the Bureau imposed conditions under the unqualified nondiscrimination standard of Section 272(c)(1), rather than the more lenient standard of Section 10(a)(1). In fact, however, the Bureau applied the correct standard and found that unless the BOCs provide unaffiliated entities equivalent access to the same listing information that they use to provide their E911 and reverse directory services, forbearance from Section 272 would result in unjust and unreasonable discrimination within the meaning of Section 10(a)(1). That conclusion derived from the Bureau's finding that the BOCs enjoy competitive advantages in the provision of interLATA E911 and reverse directory services stemming from their dominance in local exchange services.

That the conditions found to be necessary to prevent unjust

or unreasonable discrimination are the same as would be required under Section 272(c)(1) does not undermine the Bureau's finding that such conditions were required under Section 10(a)(1).

BellSouth has not explained why, in this situation, given the BOCs' exploitation of their local service dominance by denying equal access to all of the listing information they use for their own interLATA services, and the severe competitive impact of such denial, both standards could not require the same safeguards.

BellSouth also raises the objection that it is required to honor its commitment to independent LECs not to disclose their subscriber listings to third parties. As pointed out in the Order, however, BellSouth is free to honor those commitments as long as it does not use such listings for its own reverse directory services. The LECs supposedly requiring such nondisclosure have no more right than BellSouth to veto MCI's statutory nondiscrimination rights to listing information used in a BOC's interLATA services.

Finally, even if BellSouth were correct about the standard applied under Section 10(a)(1), the Bureau properly based its findings that forbearance was appropriate under Sections 10(a)(2) and 10(a)(3) on the same conditions. Thus, in the absence of such conditions, forbearance would have to be denied under those criteria, whether or not the conditions were properly imposed under Section 10(a)(1). Since BellSouth does not even challenge the Bureau's findings under Sections 10(a)(2) and 10(a)(3), reconsideration would have to be denied in any event.

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Application of Section 272 of the)	
Communications Act of 1934, as Amended,)	
to Certain Activities)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Pursuant to the Commission's recent Public Notice,¹ MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby opposes the BellSouth Petition for Reconsideration of the Common Carrier Bureau's Memorandum Opinion and Order in this docket granting petitions for forbearance from the application of Section 272 of the Communications Act of 1934 to certain services (Order).² Not content with the granting of its forbearance request, BellSouth objects that the nondiscrimination conditions placed on such forbearance are too onerous. In fact, the conditions placed on the Bureau's grant of forbearance are the minimum that could have been imposed and still meet the criteria for forbearance under Section 10 of the Communications Act.³ BellSouth's Petition for Reconsideration should therefore be denied.

¹ Pleading Cycle Established for Comments on BellSouth Corporation Petition for Reconsideration, CC Docket No. 96-149, DA 98-690 (released April 9, 1998).

² DA 98-220 (released Feb. 6, 1998).

³ 47 U.S.C. § 160.

A. Background

BellSouth and other Bell Operating Companies (BOCs) requested that the Commission forbear from applying the separation and nondiscrimination requirements of Section 272 to their interLATA E911 services and BellSouth's interLATA reverse directory information services in order to allow them to continue providing those services on an unseparated basis. The Bureau granted those requests on condition that the BOCs make available to unaffiliated entities all subscriber listing information used in the provision of their E911 services and that BellSouth make available to unaffiliated entities all directory listing information used in the provision of its interLATA reverse directory services and that such listing information be made available at the same rates and on the same terms and conditions as such information is made available to the BOCs' own E911 and reverse search services.

The Bureau determined that, unless these nondiscrimination conditions were imposed on the grant of forbearance, the BOCs' E911 listing practices and BellSouth's directory listing practices would be unjustly and unreasonably discriminatory. Accordingly, such conditions are necessary to meet the first criterion for forbearance under Section 10(a)(1), by ensuring that forbearance does not result in unjustly and unreasonably discriminatory practices.⁴ The Bureau also determined that, in light of these conditions, such forbearance would benefit

⁴ Order at ¶¶ 32, 82.

consumers, thus meeting the second criterion for forbearance in Section 10(a)(2), and would be consistent with the public interest, thus meeting the third criterion in Section 10(a)(3). The Bureau made such findings with respect to both the E911 services, in Part III(D) of the Order, and BellSouth's reverse directory services, in Part IV(D).⁵

BellSouth objects that these rather innocuous nondiscrimination conditions are too onerous and were imposed under the wrong standard. It points out that Section 10(a)(1) only requires that forbearance not result in "unjustly or unreasonably discriminatory" practices. BellSouth claims that, even though the Bureau recognized that this nondiscrimination standard is less strict than the absolute nondiscrimination standard in Section 272(c)(1), it nevertheless applied the unqualified standard in Section 272(c)(1), the provision from which forbearance relief was being granted. BellSouth argues that the Bureau should have applied the more lenient nondiscrimination standard in Section 10(a)(1), rather than the strict standard from which it was supposedly granting forbearance relief.

BellSouth is simply wrong. The Bureau applied the correct standard under Section 10(a)(1). Moreover, even if BellSouth were correct about the nondiscrimination standard under Section 10(a)(1), the Bureau correctly found that the same nondiscrimination conditions were necessary to meet the other

⁵ Id. at ¶¶ 43-51, 87-97.

forbearance criteria in Section 10(a)(2) and Section 10(a)(3). Since BellSouth does not even try to challenge those findings, its Petition would have to be denied in any event, since all three subsections of Section 10(a) must be satisfied for a grant of forbearance relief.

B. The Bureau Applied the Proper Standard Under Section 10(a)(1) and Properly Found That its Nondiscrimination Conditions Were Necessary to Meet That Standard

In its comments on BellSouth's and the other BOCs' requests for forbearance, MCI explained that integrated BOC provision of interLATA E911 and reverse directory assistance services would be anticompetitive unless nondiscrimination provisions equivalent to those in Section 272 were imposed. In other words, the BOCs should only be permitted to offer these services on an unseparated basis if they are required, as a condition of such forbearance, to provide the same subscriber listing information to unaffiliated entities that they would provide to their E911 and reverse directory operations if those services were offered through the separate affiliate required by Section 272. MCI explained that it has been denied access to such information used by BellSouth in the provision of its interLATA reverse directory assistance service, and such unjust and unreasonable discrimination has severely restricted MCI's efforts to provide a competing service.⁶ Thus, there was ample record evidence,

⁶ Opposition of MCI Telecommunications Corporation to BellSouth Petition for Forbearance at 5-10, CC Docket No. 96-149 (filed March 6, 1997).

particularly in the reverse directory context, that the denial of subscriber listing information to entities such as MCI was extremely anticompetitive and unjustly and unreasonably discriminatory.

As MCI also explained, under Section 272(c)(1), the BOCs would be required to provide the same subscriber listing information to all requesting entities that was used in the provision of their own interLATA E911 and reverse directory services. Complete forbearance from the application of Section 272 to such services, without any nondiscrimination conditions, would therefore result in the continuation of the unjust and unreasonable discrimination already experienced by MCI, with severe anticompetitive consequences.

In particular, MCI argued that BellSouth was denying access to directory listing information for subscribers of other local exchange carriers (LECs) serving adjacent areas to BellSouth's service territory, even though BellSouth used such listings in providing its reverse directory service. MCI pointed out that BellSouth only had access to such LEC subscriber listing information on account of its dominant position in the local exchange service market. As a practical matter, other LECs need to make their listings available to BellSouth for its directory and reverse directory services, since the overwhelming majority of callers needing such information will be BellSouth subscribers. MCI also explained that the competitive impact of BellSouth's denial of access to other LECs' directory listings

was especially severe because its databases contain listings for so many subscribers of other LECs. For example, in Florida alone, over 3,000,000 subscriber lines are served by independent LECs and are included in BellSouth's directory databases.⁷ Thus, the denial to MCI and others of access to such information exploits and abuses BellSouth's dominance in its service area to the detriment of competition in reverse directory services.

Based partly on this record, the Bureau found that BellSouth has competitive advantages in the provision of reverse directory services within its region, stemming from its dominant position in the provision of local exchange services.

These advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information that it uses to provide reverse directory services or if BellSouth fails to provide such access at the same rates, terms, and conditions, if any, that it charges or imposes on itself. We therefore conclude that, until it provides such access at those rates, terms, and conditions, BellSouth's subscriber listing information practices will be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1).⁸

The Bureau's reasoning, which BellSouth conveniently ignores, is fatal to BellSouth's argument. It was BellSouth's dominant position in local services, which makes it "economically beneficial for ... independent or competitive LEC[s] to have [their] customers' listings maintained in the BellSouth [directory assistance] databases," that caused the Bureau to

⁷ Id. at 8.

⁸ Order at ¶ 82.

⁹ Id. at ¶ 81.

find that BellSouth has competitive advantages in the provision of reverse directory services. Those monopoly-derived advantages, in turn, will persist if BellSouth continues to deny others access to a portion of the listings it uses to provide its own reverse directory services at the same rates, terms and conditions. It is that abuse of BellSouth's local exchange dominance that led the Bureau to find that such denial of equivalent access will be unjustly or unreasonably discriminatory within the meaning of Section 10(a)(1), especially given the need for access to a fully equivalent database in order to provide a competitive reverse directory service.¹⁰ BellSouth has failed to mention, much less rebut, that reasoning or conclusion.

The same reasoning was also applied to the BOCs' E911 services in the portion of the Order addressing those services. Thus, it was the BOCs' dominant positions in the provision of local exchange services in their respective regions that give them a competitive advantage in the provision of E911 services. Those advantages will persist if the BOCs "continue to deny unaffiliated entities access to listing information that the BOCs use to provide their E911 services ... at the rates, terms, and conditions ... that they charge or impose on themselves."¹¹ Accordingly, the Bureau determined that unless they provide such equal access, their subscriber listing information practices in connection with their E911 services will be unjustly or

¹⁰ Id. at ¶ 82 n. 239.

¹¹ Id. at ¶ 32.

unreasonably discriminatory within the meaning of Section 10(a)(1).¹²

BellSouth cites the paragraphs immediately following the discussions quoted above, in both portions of the Order, in which the Bureau characterized the conditions that it was requiring as "effectively impos[ing] the non-discrimination safeguards contained in section 272(c)(1)'s non-discrimination safeguards through appropriate conditions."¹³ That short-hand description of the nondiscrimination conditions it was imposing, however, hardly undercuts the reasoning or conclusions in the preceding paragraphs that a denial of equivalent access to any portion of the database used in the provision of the BOCs' E911 services and BellSouth's reverse directory services would be unjustly or unreasonably discriminatory under Section 10(a)(1). That such equivalent access to all listing information used in a BOC's interLATA service is also what Section 272(c)(1) requires does not make the denial of such equal information access any less unjust or unreasonable in the circumstances presented in this proceeding. Given the Bureau's conclusion that anything less than access on the same terms to all of the listings used by the BOCs constitutes unjust or unreasonable discrimination, it would be difficult to construct nondiscrimination safeguards, short of the requirements of Section 272(c)(1), that would prevent such unjust or unreasonable discrimination.

¹² Id.

¹³ See, e.g., id. at ¶ 83.

Moreover, BellSouth has not explained why, in a particular case, a practice that violates Section 272(c)(1) could not also violate Section 10(a)(1)'s standard of unjust or unreasonable discrimination. Here, in effect, that is what the Bureau found: namely, that in the circumstances presented, safeguards equivalent to Section 272(c)(1) would be necessary to prevent unjust or unreasonable discrimination under Section 10(a)(1). Thus, the Bureau did not, as BellSouth claims, impose conditions "admittedly based on a standard more stringent than that required by Section 10."¹⁴ Accordingly, contrary to BellSouth's assertion, the Bureau did "provide a reasoned analysis that the conditions imposed in the Order are 'necessary' to meet the more lenient test of that section [10(a)(1)]."¹⁵ BellSouth simply overlooked that reasoning.

BellSouth also argues that, under the proper legal standard in Section 10(a)(1), the nondiscrimination conditions that were imposed are too stringent. It claims that these services have never before been treated as nonregulated services, nor have they been subjected to such conditions. The short answer to that point, of course, is that the interLATA services involved fall within the definition of information services under the Telecommunications Act of 1996, which also imposes the separate affiliate and nondiscrimination requirements of Section 272. BellSouth's quarrel is with Congress.

¹⁴ BellSouth Petition at 5.

¹⁵ Id.

BellSouth also complains about the burden of making a hypothetical separation of its interLATA services from its local service in order to apply the required nondiscrimination conditions. Presumably, however, such a hypothetical separation is still much less burdensome than the actual separation that would be required in the absence of forbearance. In any event, the cost to BellSouth of implementing the required conditions does not lessen or otherwise affect the competitive impact of its practices.¹⁶

BellSouth also raises its excuse that other LECs have refused to allow BellSouth to share their listings with third parties and argues that the Bureau should reconsider whether it is unjust or unreasonable for BellSouth to honor its commitments to other LECs by denying third parties access to such LECs' subscriber listings. As the Bureau explained in the Order, however, BellSouth is perfectly free to honor its commitments.¹⁷ If it finds that it is forced by those commitments and its nondiscrimination requirements to make other LECs' subscriber listings unavailable through its reverse search service, it no doubt will be able to bring that fact to the attention of the LECs involved, which can then make a decision in their own best

¹⁶ BellSouth appears to be especially overwhelmed by the task of bringing its E911 service into compliance with the conditions established in the Order. MCI would have no objection to a brief extension of time to bring that service into compliance. MCI is adamant, however, that BellSouth comply immediately with the conditions established for its reverse directory service.

¹⁷ Order at ¶ 84.

interests as to whether to allow BellSouth to make their listings available to third parties or make them unavailable through BellSouth's reverse search service.

Those LECs -- which, like BellSouth, are also monopoly local service providers (at least in the case of incumbent LECs) -- do not have a prior right to deny MCI and other entities their statutory right to equal access to the listings used by BellSouth for its reverse search service. Like BellSouth, they must also make a choice. To allow them to veto MCI's statutory rights would be unjustly and unreasonable discriminatory. It would be equally unjust and unreasonable for BellSouth to accomplish the same discrimination by asserting a proxy right to exercise such a veto for them.

C. The Same Nondiscrimination Conditions Are Also Necessary to Meet the Other Forbearance Criteria

Finally, even if BellSouth were correct about the nondiscrimination standard under Section 10(a)(1), the Bureau correctly found, as to the BOCs' E911 services and BellSouth's reverse directory service, that the same nondiscrimination conditions were necessary to meet the other forbearance criteria -- i.e., that forbearance will benefit consumers, within the meaning of Section 10(a)(2), and is consistent with the public interest, as measured by whether forbearance will promote competitive market conditions, within the meaning of Section 10(a)(3). Without the conditions that were imposed, forbearance from the application of Section 272 to those services would have

been extremely anticompetitive and thus would have been denied under Sections 10(a)(2) and 10(a)(3), whether or not denial under Section 10(a)(1) was proper.

For example, in the case of BellSouth's reverse directory service, the Bureau, in applying the public interest test in Section 10(a)(3), pointed out that such an evaluation must include consideration of whether forbearance would promote competitive market conditions. The Bureau determined that

[b]ecause the conditions [imposed by the Bureau] should enable consumers to choose from among a number of competitive providers of reverse directory services, we conclude that forbearance from the application of section 272 to BellSouth's reverse directory services would be consistent with the public interest.¹⁸

Thus, the Bureau's determination that the public interest criterion was met was explicitly predicated on the nondiscrimination conditions that were imposed. Those conditions were necessary to "ensure [that] consumers can select from among a number of competitive alternatives," and thus that "the BOC derives no undue advantages from [the local exchange and exchange access] monopolies."¹⁹ Again, BellSouth has not even mentioned this criterion, let alone explained why the conditions that were imposed were not necessary to meet this criterion. Since all three criteria have to be met in order to grant forbearance,²⁰ and since BellSouth has not challenged the Bureau's

¹⁸ Id. at ¶ 97.

¹⁹ Id.

²⁰ See id.

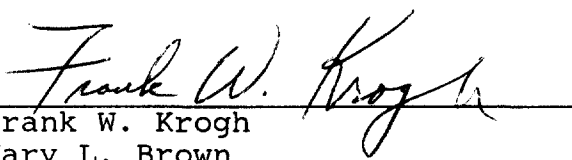
determinations with respect to Sections 10(a)(2) and 10(a)(3) or the legal standards that were applied, it must be concluded that forbearance would have been properly denied under those two criteria in the absence of the nondiscrimination conditions that were imposed. Such conditions were therefore properly imposed.

Conclusion

Since the Bureau applied the proper standard under Section 10(a)(1) in imposing nondiscrimination conditions, and since the Order properly relied on the same conditions in determining that forbearance was also proper under Sections 10(a)(2) and (3), BellSouth's Petition for Reconsideration should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that a true copy of the foregoing "COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION" was served this 11th day of May, 1998, by hand-delivery or first-class mail, postage prepaid, upon each of the following persons:

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